

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3147 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

-

GUJARAT ELECTRICITY BOARD

Versus

ASSTT. COMMISSIONER OF PAYMENT

Appearance:

MR SR SHAH for Petitioner
DELETED for Respondent No. 1
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/03/99

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 15-4-1983 passed in Civil Misc. Appeal No. 4 of 1989 by the Assistant Judge, Kheda at Nadiad restraining the respondent no. 1 from disbursing any amount to the extent of the claim of the petitioner to any other person from the amount.

2. The respondent No. 2 Keshav Mills Co. Ltd. could not discharge the dues and hence the respondent no.2 Company was taken over by the Government under the provisions of Section 18 of the Industrial Development and Regulation Act, 1951 and the authorized Controller of the respondent Company was appointed by the Central Government and the respondent Company was taken over by the Gujarat State Textile Corporation (hereinafter referred to as the "Corporation") with effect from 5-12-1970. After taking over the management of the said undertaking by the Corporation an agreement dated 9-12-1972 was executed between the parties. At that time, the total amount outstanding, due and payable by the said undertaking was to the tune of Rs. 5,92,278-12 ps. Under the terms of the agreement the payment of the aforesaid amount was agreed to remain suspended so long as the Notification under the Bombay Relief Undertakings Act, 1954 remained in force. Under the terms of the agreement the authorized Controller has agreed to pay to the Board the sum of Rs.1,95,551/- towards the dues as on the date of disconnection of supply in installments and the Board had agreed to pay the remaining amount of Rs. 5,92,578-12 ps. inclusive of delayed payment charges calculated upto 30-4-1972 which remained suspended till the Notification dated 17-6-1972. The petitioner claimed Rs. 10,59,772/32 ps. before the Assistant Commissioner of Payment. The Assistant Commissioner of Payment disallowed the claim of the petitioner on the ground that the claim of the petitioner does not fall within the Category of part 1 of the Schedule. The petitioner preferred appeal before the appellate authority u/s 23 (1) of the Sick Textile Nationalization Act, 1974. The appellate authority held that the claim of the petitioner was classified by the order dated 20-2-78. But appeal was filed after 10 months and 20 days and it was beyond 90 days which is maximum period for filing an appeal under the provisions of Limitation Act and therefore the appeal was dismissed as barred by limitation.

3. None appeared on behalf of the respondents.

4. This Court by the order dated 1-7-1997 directed the Accounts Officer, Office of Commissioner of Payments, Ministry of Commerce, Department of Textiles, New Delhi, to send the record of Application No. 67/77. Later on, this Court again passed an another order on 10-2-1999 directing the respondents to send the record of the claim petition immediately so as to reach this Court within three weeks. It was also clarified that in case the record is not received within the specified time the

Court will have to take necessary legal action for noncompliance of the order.

5. Notices of both the orders have been received by the office of the Assistant Commissioner of Payments. But the record has not been sent to this Court so far. The action of the respondents is condemnable and is not justified at all. The Central Government is directed to take notice of this order and to take necessary action against the responsible officer.

6. Learned counsel for the petitioner submitted that the claim of the petitioner has been disallowed by the Assistant Commissioner on the ground that no appeal was filed against the order dated 20-2-1978 whereby the claim of the petitioner was classified as claim in the 5th category of Part - B of the Second Schedule. The learned counsel for the petitioner also submitted that the provisions of the Limitation Act are not applicable to the proceedings undertaken under the Sick Textiles Undertakings (Nationalization) Act, 1974. He has relied on case of Sakuru Vs. Tanaji, reported in AIR 1985 SUPREME COURT 1279, wherein it has been held that the provisions of the Limitation Act 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority the power to extend the prescribed period of limitation on sufficient causes being shown by laying down that the provisions of S. 5 of the Limitation Act shall be applicable to such proceedings.

7. I have considered the submissions made on behalf of the petitioner and I have also gone through the relevant provisions of the Sick Textile Undertakings (Nationalization) Act, 1974 as well as the decision of the Apex Court (supra) relied on by the learned counsel for the petitioner.

8. It appears that unless there is express provisions of the Act concerning the proceedings before the authority or tribunal the Limitation Act is not applicable and the appeal or any proceedings which are beyond the period under the Limitation Act will not be treated as barred by limitation as in the aforesaid Act, no period of limitation has been prescribed. As such,

the limitation would not be attracted at all and the authorities ought not to have decided the claim of the petitioner as well as the appeal as barred by limitation. Thus, the authorities have committed manifest error on the face of the record.

9. Learned counsel for the petitioner further contended that the lower authorities have treated the petitioner's claim falling in 5th category of Part - B of the Schedule though it falls within the category of 1 (d) Part - A of the Second Schedule whereby any credit available for the purpose of trade or manufacturing would in this category. The lower authorities were not justified in categorizing the claim of the petitioner falling in Category (5) of Part B of Second Schedule.

10. The petitioner stopped the power supply to the respondent no. 2 Company due to nonpayment of energy charges. The N.T.C entered into agreement dated 29-12-1972 whereby the N.T.C.. assured for regular payment to be made to the petitioner and suspension of the realization of the amount which was already due before pretaking over and after regular payment the petitioner restarted to supply the power to the respondent no. 2 Company. But after the notification the petitioner is also entitled for that amount and that amount falls within category 1 (d) of Part - A of Second Schedule.

11. I have gone through the relevant provisions of the aforesaid Act and considered the submissions made on behalf of the petitioner. The N.T.C. - respondent no. 3 entered into the agreement on 9-12-1972 whereby the N.T.C. has undertaken to pay all the dues and assured payment and on the basis of that undertaking the petitioner restarted the power supply to the respondent no. 2 Company and under category 1 (d) of Part - A of Second Schedule if any credit is available for the purpose of trade or manufacturing operation would fall in this category as the credit was available for the purpose of trade and manufacturing by the petitioner. As such, the petitioner's claim falls in this category and does not fall within Category - 5 of Part - B of Second Schedule. The both the lower authorities have committed the error on the face of the record that the petitioner's claim does not fall within Category 1 (d) of Part - A of Second Schedule.

12. In view of the discussion above, the petition is allowed and the respondent no. 3 is directed to pay the entire amount of the petitioner within three months from

the date of presentation of a certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

-0-0-0-0-0-

/JVSatwara/